

REMARKS

## I. INTRODUCTION

In response to the Office Action dated December 15, 2005, claim 34 has been amended, and new claims 35-38 have been added. Claims 1-38 are in the application. Entry of these amendments, and re-consideration of the application, as amended, is requested.

## II. CLAIM AMENDMENTS

Applicants' attorney has made amendments to the claims as indicated above. These amendments were made solely for the purpose of clarifying the language of the claims, and were not required for purposes of patentability.

New claims 35-38 recite the features already presented in claim 34. The Applicant requests that these claims be entered, as they further describe the notion of service channels thus simplifying issues for appeal, do not require a new search (claim 35 has substantially the same scope as claim 34, which has already been considered).

## III. STATUS OF CLAIMS

Claims 1-38 are pending in the application.

Claims 1-3, 9-11, and 16-18 were rejected under 35 U.S.C. §103(a) as being unpatentable view of U.S. Patent No. 6,072,983 to Klosterman (Klosterman) in further view of U.S. Patent No. 5,940,737 to Eastman (Eastman).

Claims 4, 5, 12, and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Eastman and U.S. Patent No. 6,133,910 to Stinebruner (Stinebruner).

Claims 6-7 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Eastman, and U.S. Patent No. 6,434,384 to Norin et al. (Norin).

Claims 13-14 and 20-21 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Eastman, Stinebruner, and Norin.

Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Eastman, Stinebruner, Norin, and U.S. Patent No. 6,401,242 to Eyer et al. (Eyer).

Claim 15 was rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman

in further view of Eastman, Stinebruner, and Eyer.

Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Eyer and Eastman.

Claims 23-26, 28, and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of U.S. Patent No. 5,666,645 to Thomas et al. (Thomas) and Eastman.

Claims 27 and 31-32 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Thomas, Eastman, and Norin.

Claims 29-30 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Klosterman in further view of Thomas, Eastman, and Stinebruner.

Claim 33 was rejected under 35 U.S.C. §103(a) as being unpatentable over Klosterman in further view of Thomas, Eastman, and Eyer.

Claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable in view of EP 0 912 054 A2 to Eyer et al. (Eyer2) in further view of Norin and Eastman.

#### IV. ISSUES FOR REVIEW

Whether claims 1-3, 9-11 and 16-18 are patentable under 35 U.S.C. § 103(a) over Klosterman in further view of Eastman.

Whether claims 4, 5, 12, and 19 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman and Stinebruner.

Whether claims 6-7 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman and Norin.

Whether claims 13-14 and 20-21 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman, Stinebruner, and Norin.

Whether claim 15 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman, Stinebruner, Norin and Eyer.

Whether claim 15 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman, Stinebruner, and Eyer.

Whether claim 8 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eyer and Eastman.

Whether claims 23-26, 28, and 33 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas and Eastman.

Whether claims 27 and 31-32 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas, Eastman, and Stinebruner.

Whether claims 29-30 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas, Eastman, and Stinebruner.

Whether claim 33 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas, Eastman, and Eyer.

Whether claim 34 is patentable under 35 U.S.C. §103(a) over Eyer2 in further view of Norin and Eastman.

## V. ARGUMENTS

### A. The References

#### 1. The Klosterman Reference

U.S. Patent No. 6,072,983, issued June 6, 2000 to Klosterman discloses a merging multi-source information in a television system. The system provides a scheme for margin television schedule information received from multiple sources (26, 28, 30 and 34). In the preferred embodiment, a microprocessor (36) mixes and sorts the schedule information received from multiple source devices (26, 28, 30 or 34). The schedule information is then displayed in a television schedule guide (50). A user can select a program (60 or 62) by pointing to that program in the displayed schedule information (50). The system (10) then carries out an automatic switching/tuning such that the required source device (26, 28, 30 or 34) is input to the destination device (22), and a tuner is then tuned to the selected program's channel (52).

#### 2. The Eastman Reference

U.S. Patent No. 5,940,737, issued August 17, 1999 to Eastman discloses a method and apparatus for receiving and/or processing communication signals having one of a plurality of alternate signal characteristics is provided. In a particular embodiment, a desired satellite signal (e.g. DBS) having a desired characteristic may be selected from a plurality of characteristics. The characteristics may include (among others) satellite location, carrier frequency, and/or polarization

state. In a preferred embodiment, a receiver generates a control signal which is coupled to an external device (e.g. LNB, and/or satellite selector). The external device includes a decoder which receives the control signal and configures the external device for processing the desired characteristic. In a preferred embodiment, the control signal comprises a pulse train generated by the receiver utilizing a two voltage level output device under suitable software control.

### 3. The Stinebruner Reference

U.S. Patent No. 6,133,910, issued October 17, 2000 to Stinebruner discloses an apparatus and method for integrating a plurality of video sources. The video system utilizes a "virtual tuner" that integrates signals from multiple video sources to provide a plurality of "virtual channels", each of which has both a video source and a channel associated with it. When a virtual channel is selected, the correct video source is selected and tuned to the correct channel automatically. The virtual tuner may be embodied in a television or in a separate electronic component coupled thereto, such as a direct broadcast satellite receiver. Alternatively, the video system may be embodied in a universal remote control which is capable of outputting multiple signals to multiple devices in response to a key depression, using either one or two signal transmitters. Channel information may also be downloaded or obtained from a database, for example, to customize an electronic component to receive local broadcast channels.

### 4. The Norin Reference

U.S. Patent No. 6,434,384, issued August 13, 2002 to Norin et al. discloses a non-uniform multi-beam satellite communications system and method. The satellite broadcast system and method, which is said to be particularly useful for television signals, allows for local as well as nationwide broadcast service by allocating greater satellite resources to the more important local service areas. This is accomplished by broadcasting a non-uniform pattern of local service beams and designing the system to establish different service area priorities through factors such as the individual beam powers, sizes, roll-off characteristics and peak-to-edge power differentials. Frequency reuse is enhanced by permitting a certain degree of cross-beam interference, with lower levels of interference established for the more important service areas.

#### 5. The Eyer Reference

U.S. Patent No. 6,401,242, issued June 4, 2002 to Eyer et al. discloses a method and apparatus for designating a preferred source to avoid duplicative programming services. Interactive Program Guide (IPG) data for television is delivered to integrated receiver-decoders (IRDs) in a decoder population via, for example, a satellite network. The IPG data provides scheduling information for global and local programming services which are carried via the satellite network as well as another network such as a CATV network or a terrestrial broadcast network. Each IRD is assigned to an IPG region using unit addressing. At the IRD, IPG data is filtered so that only the global data and the region-specific data for the IRD's IPG region is retained and processed by the IRD. Channel map data is also delivered to the IRDs so that bundles of IRD data can be filtered out using firmware filtering to discard program sources that are not present in the channel map. The IRD data which is retained after filtering is used to provide scheduling information via an on-screen display. A preferred source may be designated when there are duplicative channels on the different networks.

#### 6. The Thomas Reference

U.S. Patent No. 5,666,645, issued September 9, 1997 to Thomas et al. discloses a data management and distribution system for an electronic program guide ("EPG") for television programs comprising an automated data collection subsystem, a manual entry and correction subsystem, a database validation subsystem, an edition generation subsystem, a configuration subsystem, and a status and control subsystem. The system may further comprise a feed generation subsystem if one or more of the EPG providers supported by the EPG distributor requires a live feed of data. The automated data collection subsystem collects EPG data from multiple sources in various formats, filters the data based on the needs of the EPG providers supported, and places the data in a centralized database in a form suitable to support the different environmental contexts of the EPG providers. The manual entry and correction subsystem permits the EPG distributor to make manual corrections, additions, and deletions to the data stored in the database. The database validation subsystem verifies the data stored in the database in accordance with designated verification options. The edition generation subsystem generates the different editions of the EPG for the different EPG providers supported by the EPG distributor. The configuration subsystem

receives information from the various EPG providers and furnishes this information to the other subsystems which utilize the information in performing their respective tasks. The status and control subsystem monitors the operation of the data management and distribution system as a whole. The various feeds and editions are then transmitted to the EPG providers by, e.g., satellite, wire, cable, etc. The EPG providers receive the feeds and editions and use them provide one or both of a dedicated channel EPG and interactive EPG to subscribers.

#### 7. The Second Eyer Reference

Publication EP0912054A2 (hereinafter referred to as Eyer2) discloses Interactive Program Guide (IPG) data for television is delivered to integrated receiver-decoders (IRDs) (130) in a decoder population via, for example, a satellite network (110,120). The IPG data provides scheduling information for global and local programming services which are carried via the satellite network as well as another network such as a CATV network (150) or a terrestrial broadcast network. Each IRD (130) is assigned to an IPG region using unit addressing. At the IRD (130), IPG data is filtered so that only the global data (400) and the region-specific data (405, 410, 415) for the IRD's IPG region is retained and processed by the IRD. Channel map data is also delivered to the IRDs so that bundles of IRD data can be filtered out using firmware filtering (185) to discard program sources that are not present in the channel map. The IRD data which is retained after filtering is used to provide scheduling information via an on-screen display (190, 195). A preferred source may be designated when there are duplicative channels on the different networks.

- B. Claims 1-3, 9-11 and 16-18 are patentable under 35 U.S.C. § 103(a) over Klosterman in further view of Eastman.

With Respect to Claim 1: Claim 1 recites:

*In a network broadcasting a first signal having a first set of programs, each of the programs in the first set of programs transmitted on an associated one of a plurality of service channels to a plurality of subscribers and a second signal having a second set of programs, each of the second set of programs transmitted on an associated one of the plurality of service channels, a method of providing program guide information describing the second set of programs, comprising:*  
*broadcasting first program guide information describing the first set of programs to the subscribers on a first service channel on the first signal; and*

*broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on the second signal, wherein a fundamental signal characteristic of the second signal differs from the fundamental signal characteristic of the first signal.*

Klosterman discloses a system wherein program material from a variety of independent sources can be merged and a source identifier is provided with the program guide so that when the user selects that channel, the subscriber's equipment tunes to the appropriate source.

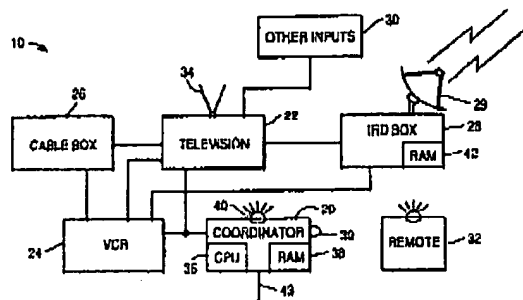


FIG. 1A

When a user selects a show or channel located on one of the displayed channels within a displayed guide, the system reads the source identifier associated with that show or channel. In the preferred embodiment, the system then carries out an automatic switching/tuning process that switches the input to the television (either RF or video) to a source device. Source devices include DBS, cable box, television tuner, etc. The system then tunes to the required channel for the desired show. Additionally, the source identifier can be utilized to switch between various devices automatically when unattended VCR programming is desired. Furthermore, when program information is received from multiple satellite sources and a desired channel is selected, the present invention can, in one embodiment, automatically move the customer's satellite dish such that the customer receives the desired program from the associated source. The present invention then tunes to the correct channel.

In creating a merged television guide, a channel map is created which identifies the channels available on the multiple sources, and identifies their source. For example, in the case of DBS/local channel implementations, a channel map is created with both local cable and DBS channels merged. The local channels and the DBS channels are tagged with a source identifier. When the user/consumer selects a non-DBS channel from the guide, the integrated receiver/decoder unit (IRD box) for the satellite switches the IRD to couple the local cable to the receiver. The system then tunes the television tuner or other tuning device to the required channel. If a DBS channel is later selected, the system switches the IRD to couple the satellite receiver/decoder to the receiver. The system then tunes the DBS tuner to the selected DBS channel. In the case of, for example, cable and antenna inputs, the system switches to the correct video input and then tunes the television tuner to the required channel for receiving the selected source. Thus, automatic access to multi-source television schedule guide information is provided.

Klosterman Does not Disclose "Broadcasting Second Program Guide Information Describing the Second Set of Programs to a Subset of the Subscribers on the First Service Channel on a Second Signal": The Applicants initial Remarks indicated that Klosterman does not disclose *broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on a second signal.*

The First Office Action responded that the feature "the same service channel being the same channel used to broadcast the first program guide" is not recited in the claims. The Applicants respectfully disagreed, and pointed out that claim 1 recites that the first program guide is transmitted

on a first service channel on a first signal and that the second program guide is broadcast on the first service channel on a second signal. Clearly, they are broadcast on the same service channel.

The Second Office Action then responded that the claimed feature is disclosed in the Klosterman reference.

The Applicants disagreed. Klosterman discloses three embodiments. Embodiment 1 combines a cable input and a satellite dish. Embodiment 2 discloses combining inputs from two satellites. Embodiment 3 combines "local cable" and satellite inputs.

The first and third embodiments clearly do not disclose a system wherein the second program guide information is broadcast on the first service channel (the same that was used to broadcast the first program guide). This is plainly the case because the same service channels are not available from cable and satellite systems (at least, the Klosterman reference certainly does not disclose this).

The second embodiment (which combines the input from a first satellite and a second satellite) is likewise unavailing, as it plainly does not disclose that the second program guide information is transmitted on the same service channel as the first.

The Final Office Action disagreed, and responded by *introducing* something that is neither known in the art nor disclosed in Klosterman ... the notion of a "satellite broadcast channel":

"the input from a first satellite and a second satellite does disclose a second program guide information transmitted [on] the same service channel as the first [program guide information] since the first and second program guide information are transmitted via satellite broadcast channel (first service channel)."

What is a "satellite broadcast channel"? The Final Office Action first defines a "channel" as a "band of frequencies" then argues that a satellite broadcasting information on a "band of frequencies" is broadcasting on a "satellite broadcast channel."

This argument is erroneous because it relies on a definition of a "channel" is at best, incomplete and at worst, incorrect. As a general matter:

- (1) In Frequency Division Multiple Access (FDMA) systems, a channel spans a frequency band. However, this does not mean that any "band of frequencies" is a "channel". For example, in a broadcast AM FDM system, the frequencies 570KHz-1610KHz band does not represent "a channel" in the ordinary sense, but rather a plurality of them.



- (2) In a Time-Division Multiple Access (TDMA) system, channels are defined by time slots, not frequencies.
- (3) In a Code-Division Multiple Access (CDMA) system, channels are defined by the pseudonormal (PN) codes associated with the channel.

Using this erroneous definition, the Final Office Action argues that a "satellite broadcast channel" (singular) is a plurality of "channels" used by the satellites to broadcast data.

"Thus, a satellite broadcast channel is discussed in the previous Office Action as a band of channels used by satellites to broadcast data, it is unclear why such a definition is inconsistent with Klosterman which fails to disclose a contradictory definition of a satellite channel."

The Final Office Action arrives at this erroneous conclusion because it assumes that since a channel spans a frequency band, that means any frequency band can be referred to as a "channel" (in this case, by defining a "satellite broadcast channel" to include the plurality of the channels of information transmitted by the satellite).

The Applicants have stated that this argument is inconsistent with Klosterman itself. The Final Office Action asks why. It is simple. Klosterman describes a system that transmits multiple "channels" of information from each satellite, not a channel of information:

In creating a merged television guide, a channel map is created which identifies the channels available on the multiple sources, and identifies their source. For example, in the case of DBS/local channel implementations, a channel map is created with both local cable and DBS channels merged. The local channels and the DBS channels are tagged with a source identifier. When the user/consumer selects a non-DBS channel from the guide, the integrated receiver decoder unit (IRD box) for the satellite switches the IRD to couple the local cable to the receiver. The system then tunes the television tuner or other tuning device to the required channel. If a DBS channel is later selected, the system switches the IRD to couple the satellite receiver/decoder to the receiver. The system then tunes the DBS tuner to the selected DBS channel. In the case of, for example, cable and antenna inputs, the system switches to the correct video input and then tunes the television tuner to the required channel for receiving the selected source. Thus, automatic access to multi-source television schedule guide information is provided. (col. 3, lines 36-55)

Furthermore, when program information is received from multiple satellite sources and a desired channel is selected, the present invention can, in one embodiment, automatically move the customer's satellite dish such that the customer receives the desired program from the associated source. The present invention then tunes to the correct channel. (col. 3, lines 28-35)

Claim 1 Recites a "Service Channel", not a "Satellite Broadcast Channel": Claim 1 recites a "service channel," not a "channel," and not a "satellite broadcast channel." The Final Office Action answers:

"the features upon which the Applicant relies (i.e. service channel distinguished from a channel) is not recited in the rejected claim(s)."

This is plainly untrue. The Applicants claims recite a "*service* channel" ... not a "channel" and not the Final Office Action's "satellite broadcast channel". While limitations are not read from the specification into the claims (there is no need to here, as the "service" limitation *is recited*) the Office Action has essentially ignored this feature and substituted another.

Klosterman Does not Teach a System Wherein the First and the Second Signals Differ in a Fundamental Signal Characteristic: Finally, if the Second Office Action's "satellite broadcast channel" encompasses signals with different content, each transmitted on the same "satellite broadcast channel", Klosterman is still unavailing, because claim 1 recites that the first and the second signals *differ in a fundamental signal characteristic*. If the Second Office Action's "satellite broadcast channel" encompasses signals with different fundamental characteristics, how can they be regarded to be on the same "satellite broadcast channel"?

The Final Office Action acknowledges that Klosterman doesn't teach this feature, and instead relies on Eastman. But if Klosterman requires the signals to be transmitted on the same "satellite broadcast channel" how can the signals also have different fundamental characteristics? Eastman teaches signals at different downlink frequencies. According to the Final Office Action's definition, these cannot both be the same "satellite broadcast channel". Neither can they be considered to be the same "satellite broadcast channel" if they broadcast with different polarizations.

Klosterman Does Not Teach Broadcasting the Second Program Guide Information to a Subset of the Subscribers: Klosterman also does not disclose or teach that the second signal is broadcast to a *subset* of subscribers. The Office Action argues:

"the recipients of the local channels/guide are a subset of the recipients of the DBS channels/guide wherein a subset of the DBS channel recipients may comprise all of the DBS channel recipients. Furthermore, local channels correspond to specific localities, the

recipients of the DBS channels/guide (non-local channels) also receive local channels specific to their geographic location resulting in the recipients of the local channels/guide comprising a subset of the recipients of the DBS channels/guide"

This distorts the teaching of Klosterman. In all of the arguments above, the Office Action relied on Klosterman's second example ... which disclosed signals being received from two different satellites. Klosterman expressly teaches that DBS systems do not receive local programming:

Unfortunately, a DBS system normally does not receive local network or local independent channels. In order to provide these missing local channels, some DBS receivers are capable of automatically switching between the DBS satellite input and a local input. This is accomplished by placing the IRD box between the television (or a VCR connected to the television) and the local line (local cable or local antennae). When a local channel is selected by the user, the IRD box automatically removes DBS from service and becomes a bypass for the local input. A user can select a local channel either manually or with a remote control. Access to locally available channels is crucial because the majority of prime time viewing is on those local networks.

That is the very reason that Klosterman is of value. If the DBS satellite presented local channels, Klosterman would not be needed at all.

Therefore, Klosterman certainly does not teach broadcasting to a subset of subscribers ... it in fact teaches away from this.

The Combination of the Klosterman and Eastman References is Improper: 'The First Office Action indicated that the motivation to modify Klosterman as described in Eastman would have been "in order to alleviate the need to move the satellite dish for receipt of signals from a second source."

There are three problems with this argument.

First, satellite antennas for receiving digital video are typically narrow in beamwidth, and typically, use antennas with single reflectors and multiple feeds in order to "avoid the need to move the satellite dish for receipt of signals from a second source." Hence, the proffered motivation is illusory.

Second Klosterman teaches away from the proffered modification. Klosterman teaches that when a channel from another satellite is selected, the antenna is slewed to point at the second

satellite instead of the first, thus teaching physical diversity between the signals and that the signals do not differ in a fundamental signal characteristic, as recited in claim 1.

The Second Office Action answered by that Klosterman does not "preclude[s] a motivation to combine the references."

However, rebuttal of a *prima facie* case of obviousness does not require that the Applicant show that the modification be *precluded*. All that is required is to show that the art relied upon teaches away from the Applicants' invention. As recited in M.P.E.P. § 1504.03:

"A *prima facie* case of obviousness can be rebutted if the applicant...can show that the art in any material respect 'taught away' from the claimed invention...A reference may be said to teach away when a person of ordinary skill, upon reading the reference...would be led in a direction divergent from the path that was taken by the applicant." *In re Haruna*, 249 F.3d 1327, 58USPQ2d 1517 (Fed. Cir. 2001).

Hence, even if a *prima facie* case of obviousness was made, it has been rebutted.

Finally, the Final Office Action answered:

"... it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning. But so long as it takes into account knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The problem here is that the rejection *does* include knowledge gleaned only from the Applicant's disclosure. As demonstrated above, the proffered motivation for modifying Klosterman is illusory and Klosterman itself teaches away from the suggested modification.

Claim 9 and 16 recite features analogous to those of claim 1 and are patentable for the same reasons.

Claims 2-3, 10-11, and 17-18 recite the features of claims 1, 9, and 16, respectively, and are patentable on the same basis.

C. Claims 4, 5, 12, and 19 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman and Stinebruner.

Claims 4, 5, 12, and 19 recite the features of claims 1, 9, and 16, respectively, and are patentable on the same basis

D. Claims 6-7 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman and Norin.

Claims 6-7 recite the features of claim 1 and are patentable on the same basis.

E. Claims 13-14 and 20-21 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman, Stinebruner, and Norin.

Claims 13-14 and 20-21 recite the features of claims 9 and 16, respectively, and are patentable on the same basis.

F. Claim 15 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman, Stinebruner, Norin and Eyer.

Claim 15 recites the features of claim 9 and is patentable on the same basis.

G. Claim 15 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eastman, Stinebruner, and Eyer.

Claim 15 recites the features of claim 9 and is patentable on the same basis.

H. Claim 8 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Eyer and Eastman.

Claim 8 recites the features of claim 1 and is patentable on the same basis.

I. Claims 23-26, 28, and 33 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas and Eastman.

With Respect to Claim 23: Claim 23 recites:

*An apparatus for use with a system broadcasting a first signal having a first set of programs to a plurality of subscribers and a second signal having a second set of programs to a subset of the subscribers, comprising:*

*a compiler, configured to segment the programs into the first set of programs and the second set of programs, and to generate first program guide describing the first set of programs and second program guide information describing the second set of programs;*

*a first transmitter, communicatively coupled to the compiler, for transmitting first program guide information describing the first set of programs on a first service channel on [[a]] the first signal; and*

*a second transmitter, communicatively coupled to the compiler, for transmitting the second program guide information describing the second set of programs on the first service channel on [[a]] the second signal;*

*wherein a fundamental signal characteristic of the second signal differs from the fundamental signal characteristic of the first signal.*

Claim 23 is rejected as unpatentable over Klosterman in view of Thomas, and in further view of Eastman.

As a threshold matter, Claim 23, like claim 1, recites the transmission of first program guide information ... on a first service channel on the first signal and ... the transmission of the second program guide information ... on the first service channel on the second signal. For all the reasons described above, these features are not taught by Klosterman and Eastman, even when combined. Also, for the reasons described above, the Applicants respectfully disagree that there is a teaching to combine the Klosterman and Eastman references.

The Rejection Misconstrues Klosterman: Turning first to what Klosterman discloses, the Second Office Action indicated that the transmission of first program guide information ... on a first service channel on the first signal is disclosed by Klosterman's

"IRD box 28 receives television programs along with other information via, in one embodiment, satellite dish 29" and the transmission of the second program guide information ... on the first service channel on the second signal by Klosterman's "program guide information can be received through cable box 26, other inputs 30, antenna 34 and/or through any other transmission medium (e.g. dedicated twisted pair telephone line)."

The Applicants disagreed, because the television program signals received on a satellite dish 29 are *not* received on the same channel (the *first service channel* of claim 23) channel as those received through a cable box 26, other inputs 30, antenna 34, and a dedicated twisted pair telephone line.

The Final Office Action's answer relies again on the notion of the "satellite broadcast channel" ... a notion that is not found in any of the cited references. For the reasons described above with respect to claim 1, the Applicants respectfully traverse.

Klosterman is Not Combinable with Thomas: Plainly, Klosterman is directed to a system in which program guide information from a variety of different sources are received and merged *by the user's receiving equipment*. Just as plainly, Thomas is directed to a system in which program guide information is obtained from a variety of sources, merged by a third party and provided to broadcasters so that they may broadcast a merged program guide, thus obviating the need for the user's equipment to merge the program guide information. Klosterman and Thomas plainly teach away from one another because they entirely different approaches to the same problem.

Claims 24-26, 28, and 33 recite the features of claim 23 and are patentable on the same basis.

J. Claims 27 and 31-32 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas, Eastman, and Stinebruner.

Claims 27 and 31-32 recite the features of claim 23 and are patentable on the same basis.

K. Claims 29-30 are patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas, Eastman, and Stinebruner.

Claims 27 and 31-32 recite the features of claim 23 and are patentable on the same basis.

L. Claim 33 is patentable under 35 U.S.C. §103(a) over Klosterman in further view of Thomas, Eastman, and Eyer.

Claim 33 recites the features of claim 23 and are patentable on the same basis.

M. Claim 34 is patentable under 35 U.S.C. §103(a) over Eyer2 in further view of Norin and Eastman.

Claim 34 recites:

*In a network broadcasting a first signal having a first set of programs, each of the programs in the first set of programs transmitted on an associated one of a plurality of service channels to a plurality of*

*subscribers and a second signal having a second set of programs, each of the second set of programs transmitted on associated one of the plurality of service channels, a method of providing program guide information describing the second set of programs, comprising:*

*broadcasting first program guide information describing the first set of programs to the subscribers on a first service channel on the first signal; and*

*broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on the second signal, wherein a fundamental signal characteristic of the second signal differs from the fundamental signal characteristic of the first signal.*

The Final Office Action indicates that

“The claimed ‘broadcasting first program guide information describing the first set of programs to the subscribers on the first service channel [...]’ is met by ‘FIG. 4 illustrates the transmission and reception of global and regional IPG data in accordance with the present invention. IPG data bundles which are broadcast, e.g., over a satellite network to a user’s home, include global IPG data in a bundle 0 or B0 (400) (Eyer [0071]). The claimed ‘broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel [...]’ is met by ‘FIG. 4 illustrates the transmission and reception of global and regional IPG data in accordance with the present invention. IPG data bundles which are broadcast, e.g., over a satellite network to a user’s home, include ... IPG data for a specific IPG region, e.g. region A, in an associated bundle 1 or B1 (405), IPG data for a region B in an associated bundle B1 (410, and IPG data for a region C in an associated bundle B1 (415). Regions A, B, and C are different IPG regions that are served by a common satellite broadcast network (Eyer [0071])”

However, Eyer does not disclose *broadcasting second program guide information describing the second set of programs to a subset of the subscribers on the first service channel on the second signal*, as claim 34 requires. Instead, the “second program guide information describing the second set of programs” is transmitted on a different service channel (B1 instead of B0). Also, the transmission of programs to different regions A, B, and C on channel B1 does not read on claim 34, as those subscribers in region B are not a *subset* of the subscribers recited in claim 34, but rather a *different* set. Eyer in fact discloses reserving a separate service channel for transmitting the information of interest, and in so doing, teaches away from the Applicants’ invention.

The Applicants also disagree regarding whether there is any motivation to combine Eyer2 with Norin. The proffered motivation (reducing processor load required to filter out the received IPG data) appears to be taken from the Applicants’ disclosure (see page 2, line 25-28) rather than the prior art.



The Final Office Action has also failed to provide a motivation for modifying Eyer 2 as described in Eastman (instead, referring to Klosterman).

#### VI. NEW CLAIMS

New claims 35-38 are presented for consideration.

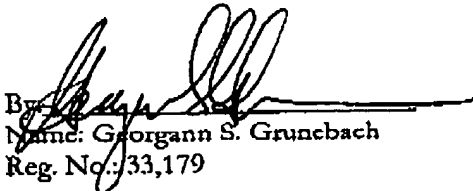
The Applicants request that these amendments be entered, because they simplify issues for appeal (mooring the "satellite broadcasting channel" issue), and at least with respect to claim 1, do not require a new search of further consideration (as they render the scope of claim 1 to be substantially the same as that of claim 34, which has already been considered. Should the Examiner decide to permit the entry of claim 35, the Applicant will cancel claim 34.

## VII. CONCLUSION

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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